

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Utility Application of: Charles J. Jacobus

Application No.: 09/785,385

Confirmation No.: 2386

Filed: February 16, 2001

Art Unit: 2452

For: DISTRIBUTED COMPUTING
ENVIRONMENT

Examiner: D. Changkong

APPELLANT'S REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is being submitted in response to the Response to Argument section in the Examiner Answer mailed September 28, 2010, which begins on page 10 of the Answer. Appellant will use the same numbering and lettering system used throughout the briefing.

The Board will note that this application has already been through two appeals. The first was Appeal No. 2006-2763, heard December 12, 2006; the second was Appeal No. 2009-000997, decided July 16, 2009. Although Appellant has submitted the most recent decision in evidence, Appellant is also submitting herewith a Supplemental Appeal Brief, the only change being that both of these appeals are called out in Section II of the Brief, Related Appeals and Interferences.

In the first appeal of '06, the Examiner was sustained. However, in the second appeal of '09, the Examiner was reversed. Although in the second appeal the Examiner's rejection was based upon the *DeSimone* reference, on page 9 of the decision on appeal, the Board made certain findings regarding content-based routing. In particular, the Board found that *DeSimone* was silent regarding a specific teaching or suggestion that the *network routing modules* disclosed therein are "*operative to permit or inhibit the distribution of a particular message based upon the content of the message*," as claimed. We find the aforementioned routers are merely operative to perform *normal packet routing*, as previously discussed." (Decision on appeal, top of page 9). The Board also noted that

Appellant has made it clear throughout prosecution that “content” is *not* a media type. Based upon such findings, the Board of Appeals “read the instant claims as requiring *specific data content in a message* to trigger content-based routing.” (Decision on appeal, middle of page 10, emphasis in original).

A. McCanne does *not* disclose “content-based routing.”

As with DeSimone, McCanne discloses only what amounts to normal packet routing, and clearly does not teach or suggest content-based routing as disclosed and claimed by Appellants. The Examiner raises a couple of new arguments in this regard. At the top of page 11 of the Examiner’s Answer, the Examiner states that “*McCanne* considers the IP address to be content ...” citing 14:6-8 of McCanne. This misses the mark and falls short of reading on Appellant’s claimed subject matter.

In claim 1, Appellant defines “content” in the context of “content-specific data *within messages* to implement data routing and message culling in a groupware application.” Appellants’ invention further includes one or more routing modules which, in addition to normal packet routing, permit *or inhibit* the distribution of a particular message based upon the content of the message. Given all of Appellant’s qualifiers, McCanne’s use of the word “content” fails to establish *prima facie* anticipation.

Apart from McCanne’s use of the term “content-aware,” Appellant’s claim specifically states that the content-specific data are *within messages*. To a person of skill in the art, in packet communications, an IP address and a message itself are clearly distinctly different. McCanne does not use content-specific data within messages to implement data routing or message culling. Nor does McCanne use modules or applets to permit *or inhibit* the distribution of a particular message based upon the content of a message. Rather, according to McCanne, redirection can be used (as in http [normal packet routing]) to redirect a given client away from the origin server that advertises screening content, say, to a nearby overlay router.” (McCanne; 14:3-6). Thus, it appears that McCanne uses normal packet routing to permit the redirection of a single message, and not permit or inhibit the distribution of a particular message, certainly not based upon *the content of the message*.

Beginning toward the middle of page 11 of the Examiner's Answer, the Examiner argues that McCanne discusses "semantically-aware transformations conditioned on bandwidth constraints, including a control mechanism for restricting, managing, or modifying the relayed information." The example that the Examiner gives is the ability of "MediaBridge" to determine whether bandwidth requirements may be too high. According to the Examiner (and *not McCanne*) "The MediaBridge must look to the content of the streaming content to determine its original image size, resolution, etc. in order to determine whether or not to permit distribution of the content." Again, the Examiner is misguided in concluding that size, resolution, etc. is the same as content itself.

Even if McCanne looked at "how big" a particular packet is, that is *not the same* as using the *content itself* to permit or inhibit the distribution of a message in addition to normal packet routing. The Examiner's argument here is similar to the one made in the past which was reversed on appeal regarding the Examiner's reliance on DeSimone to determine whether a packet contained audio or video. Again this misses the point. In Appellants' invention, it is the data *within the message itself* that determines distribution in a multicast cloud, and not "how big it is." In summary, the size, resolution, frame rate, or color depth of an image is not the same as "content," and McCanne does not anticipate.

B. McCanne's "designated router" does *not* read on Appellants' claimed lobby manager.

Appellant's claim 11 is directed to a distributed network computing environment, including "at least one lobby manager that facilitates communications between any network-enabled client application and a federation. Appellant's claim 11 also includes a limitation of network routing modules which, in addition to normal packet routing, permit or inhibit the distribution of a message based upon the content thereof to reduce the communications with the federation. Thus, *prima facie* anticipation has not been established with respect to McCanne for at least the reason that McCanne does not teach or suggest true content-based routing.

In addition, based upon the structural wording of the claim, given that Appellant's network routing modules are router-embedded applets reduce communications with the federation, the lobby manager also operates under content-based message routing in addition to normal packet routing.

The mere fact that McCanne discloses a multicast cloud or facilitates communication between the client and the cloud, is not enough to read on Appellant's claim 11.

C. Claims 2, 12 and 13.

During prosecution, the Examiner proffered the rationale that the proposed combination of McCanne in view of Lambright *et al.* "made sense" because it would allow McCanne to be used for a "different purpose." Now, however, the Examiner presents new arguments, stating that a modification of McCanne in view of Lambright "is merely an example of simple substitution of one known element for another to obtain predictable results. (Examiner's Answer, bottom of page 12). Thus, apparently now relying on the *KSR* decision, the Examiner is really once again saying that the proposed combination would allow McCanne to be used for "a different purpose." This amounts to nothing more than an "obvious to try" *rationale*, which has been discredited by the Board and the Federal Circuit.

D. Claims 5 and 21.

Appellants' claims 5 and 21 include the limitation that the lobby manager is further operative to validate the application in terms of compatibility and download data to correct for deficiencies. During prosecution, the Examiner stated that this would "improve" McCanne, though no evidence was presented as to how this might happen. The Examiner argues that such a modification is an example of a known technique to improve a similar system in the same way. Again, however, the Examiner has not presented any *substantive evidence* in support of the rejection.

E. Claims 9 and 19.

Again, the Examiner uses the same rationale for rejecting claims 9 and 19 as was used to reject claims 5 and 21; namely, that the proposed combination would "improve" the primary reference McCanne, even though no substantive arguments were presented in support. Rather than present new evidence, or any evidence in support of the rejection, the Examiner essentially repeats arguments made in the final rejection (Examiner's Answer, page 14). Accordingly, Appellants rest on arguments previously made during prosecution, including their Appeal Brief.

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Respectfully submitted,

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